



JAMES A. NOYES, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

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P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE: **WR-4**

June 6, 2002

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012-2756

Dear Supervisors:

**RIO HONDO COASTAL BASIN SPREADING GROUNDS
APPROVE AGREEMENT TO SPREAD TREATED GROUNDWATER
SUPERVISORIAL DISTRICT 1
3 VOTES**

IT IS RECOMMENDED THAT YOUR BOARD:

Approve and instruct the Chairman to sign the enclosed agreement with the U.S. Environmental Protection Agency (USEPA) and the Water Replenishment District of Southern California (WRD), which describes the terms and conditions for accepting treated groundwater for discharge into the Rio Hondo Coastal Basin Spreading Grounds located in the Cities of Montebello and Pico Rivera for groundwater replenishment.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

We are recommending that your Board approve and sign the enclosed agreement with the USEPA and the WRD, which describes the terms and conditions for accepting treated groundwater for discharge into the Rio Hondo Coastal Basin Spreading Grounds.

To prevent the spread of groundwater contamination from the San Gabriel Valley into the Central Groundwater Basin, the USEPA has constructed a treatment plant to extract the contaminated groundwater and treat it so that it may be used by local water purveyors as part of the municipal water supply. However, in the interim until approvals have been received to allow the treated groundwater to be provided to a local purveyor and the facilities constructed to deliver this water to the purveyor, the USEPA desires to provide this water to the

Los Angeles County Flood Control District for use in groundwater recharge. The water will be discharged into the Rio Hondo Coastal Basin Spreading Grounds where it will be used for recharge of the Central Groundwater Basin. The WRD is a party to this agreement since they are responsible for purchasing recharge water for the Central Groundwater Basin and assuring compliance with all relevant water quality regulations.

Implementation of Strategic Plan Goals

This action meets the County Strategic Plan Goal of Service Excellence by providing a beneficial use of the treated groundwater during this interim period until it can be made available for use in the municipal water supply. This allows USEPA to begin operation of the treatment plant immediately to halt further migration of contaminated groundwater.

FISCAL IMPACT/FINANCING

There will be no impact to the County's General Fund.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The enclosed agreement has been approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

The USEPA is implementing this project under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act.

CONTRACTING PROCESS

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no negative impact to current County services or projects as a result of this project. The WRD is responsible for assuring that the treated groundwater complies with all relevant water quality regulations and is indemnifying the County against future negative impacts, if any, from the use of treated groundwater for recharge.

The Honorable Board of Supervisors
June 6, 2002
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CONCLUSION

We are enclosing an original and two copies of the agreement. Please return two fully executed copies to Public Works for forwarding to USEPA and WRD. The fully executed original should be retained for your files.

Respectfully submitted,

JAMES A. NOYES
Director of Public Works

GH:jac
A:\RHCBSG.wpd

Enc.

cc: Chief Administrative Office
County Counsel

A G R E E M E N T

This Agreement made, entered into, and executed as of the ____ day of June 2002 by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, hereinafter designated as "DISTRICT," the WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA, hereinafter designated as "WRD," and the government of the UNITED STATES OF AMERICA, hereinafter "U.S." acting through its ENVIRONMENTAL PROTECTION AGENCY, hereinafter designated "AGENCY."

R E C I T A L S

WHEREAS, the DISTRICT performs flood control and water conservation primarily of stormwaters and other runoff within the County of Los Angeles pursuant to the Los Angeles County Flood Control Act, California Water Code, Uncodified Acts, Act 4463 (the "Flood Control Act");

WHEREAS, the Flood Control Act authorizes the District to conserve waters by spreading, storing, retaining, or causing them to percolate into the soil, therefore, allowing recharge of the subsurface water storage within the groundwater basins in the County of Los Angeles;

WHEREAS, the DISTRICT owns and operates facilities ("Spreading Grounds") designed to allow rainfall and other runoff from the local watersheds to percolate into the soil and into the groundwater basins ("Storm-flow Spreading");

WHEREAS, after conducting Storm-flow Spreading, from time to time, the DISTRICT experiences unused capacity at the Spreading Grounds (the "Unused Capacity");

WHEREAS, Section 17 of the Flood Control Act authorizes the DISTRICT to cooperate with the government of the U.S. to conserve waters when such waters are provided at no cost to the District; and

WHEREAS the U.S., acting through its AGENCY, pursuant to the authority granted by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601 et. seq. ("CERCLA"), plans to extract and treat contaminated groundwater (the "Agency Reclaimed Water") at the Whittier Narrows Operable Unit ("WNOU") of the San Gabriel Valley Superfund site at the AGENCY's groundwater treatment plant (the "Agency Treatment Facility") constructed behind the Whittier Narrows Dam; and

WHEREAS, the AGENCY intends to treat the Agency Reclaimed Water to a state where the water shall become acceptable to be purveyed by a third-party utility (the "Purveyor") to the public as potable drinking water (the "Agency Treated Water") under a permit by the State of California Department of Health Services; and

WHEREAS, the AGENCY anticipates that the Purveyor will be able to accept the Agency Treated Water within approximately twelve (12) months from the above date of this Agreement; and

WHEREAS, as an interim measure until the AGENCY is authorized to deliver Agency Treated Water to a Purveyor, the AGENCY and the WRD desire to conserve the Agency Treated Water into the Central Groundwater Basin by discharging it through the DISTRICT's canal, commonly known as the Zone 1 Ditch (the "Zone 1 Ditch"), located within the area of the Whittier Narrows Reservoir and transporting it to the DISTRICT's Spreading Grounds commonly known as the Rio Hondo Coastal Basin Spreading Grounds (the "Spreading Grounds"); and

WHEREAS, the WRD serves as the basin water manager for and is responsible for managing water levels in the Central Groundwater Basin; and

WHEREAS, WRD utilizes various sources of water for recharge in certain spreading grounds in the Central Basin. WRD is responsible for funding the cost of purchased recharge water and complying with permits regulating the use of low-cost reclaimed water for spreading. WRD seeks to optimize the use of these various sources of water to minimize cost while complying with all relevant water quality regulations; and

WHEREAS, the AGENCY and WRD desire that the DISTRICT make available the DISTRICT's Unused Capacity at the Spreading Grounds to allow spreading of the Agency Treated Water; and

WHEREAS, the DISTRICT agrees to cooperate with AGENCY and WRD to allow the spreading of Agency Treated Water; and

WHEREAS, the parties desire that any Agency Treated Water that is spread into the Central Basin Spreading Grounds meet certain quality standards as set forth in this Agreement; and

WHEREAS, the AGENCY shall perform periodic testing and monitoring of the Agency Treated Water to assure that standards set forth herein are met for water discharged into the Zone 1 Ditch; and

WHEREAS, the WRD shall assist in monitoring the results of the Agency Testing and report to the DISTRICT if water delivered to the Zone 1 Ditch fails to meet the desired water quality standards;

NOW, THEREFORE, in consideration of mutual promises, agreements, and covenants of the parties herein contained, said parties hereto agree as follows:

1. **Spreading of Agency Treated Water**. Upon receipt of a Written Request (as defined below), the DISTRICT shall permit the spreading of Agency Treated Water from the AGENCY pipeline through the Zone 1 Ditch and into the DISTRICT's Spreading Grounds solely to the extent that the DISTRICT may determine, in the DISTRICT's discretion as set forth in Sections 1(a) through 1(e), below, that the DISTRICT has Unused Capacity in the Spreading Grounds and their appurtenant structures.
 - a. Subject to the provisions of Section 1(e) below, the DISTRICT shall have the discretion to determine the facilities, spreading areas, flow rates, and the duration of delivery and spreading of Agency Treated Water, based upon conditions existing at the times when the spreading is requested by the Written Request, including, without limitation, based upon the Unused Capacity available in the Spreading Grounds and/or contingent upon any emergency and/or contingent upon any condition beyond the DISTRICT's control. The AGENCY acknowledges that any Agency Treated Water delivered to the DISTRICT that is not spread pursuant to this Agreement will bypass the DISTRICT's facilities and may be discharged into the Pacific Ocean without any liability or consequence to the DISTRICT or to WRD.
 - b. Subject to the provisions of Section 1(e) below, the DISTRICT shall have the power to change any item outlined in the Written Request when, in the DISTRICT's sole and absolute discretion, the transport and spreading contemplated in whole or in part in the Written Request cannot or should not be performed due to operational and/or maintenance problems or difficulties (including, but not limited to, weather and other conditions, trespassing, insect infestations, scarification, weed abatement, and/or construction in or at the Spreading Grounds). The DISTRICT shall make a good faith effort to provide the AGENCY and WRD with at least 24 hours' telephonic notice of such changes.
 - c. Notwithstanding any provision in this Agreement, the DISTRICT shall have full and absolute discretion to give priority to performing and/or accomplishing its mandate of flood control and water conservation, including, without limitation, to Storm-flow Spreading before performing any act pursuant to this Agreement, including allowing the spreading of Agency Treated Water as set forth herein.

The DISTRICT shall not in any manner be held liable or responsible under this Agreement, including the cost or value of any water, including Agency Treated Water, discharged into the Zone 1 Ditch, in connection with the DISTRICT's spreading of any water of any kind or the DISTRICT's failure to perform the spreading of any water of any kind, including, without limitation, of Agency Treated Water or as contemplated hereunder; and

- d. The DISTRICT reserves the right to cease spreading Agency Treated Water at any time, without prior notice, in connection with any emergency that may exist, as the DISTRICT may determine in the DISTRICT's sole and absolute discretion.
 - e. Without limiting any other provisions in this Agreement, the DISTRICT shall consult and reasonably cooperate with WRD with respect to any tentative decision by the DISTRICT to not spread Agency Treated Water due to the factors enumerated Sections 1(a) through 1(b), above. Notwithstanding the foregoing, upon consulting with WRD, the final decision to not spread Agency Treated Water shall be at the sole discretion of the District. The DISTRICT shall spread Agency Treated Water only upon obtaining WRD's approval, which approval shall not be unreasonably withheld and shall be based on WRD's efforts to optimize the use of various sources of replenishment water to minimize cost while complying with all relevant water quality regulations.
2. **DISTRICT's Determination of Unused Capacity in the Spreading Grounds.** The DISTRICT shall have sole and absolute discretion to determine any Unused Capacity in the Spreading Grounds after taking into consideration the DISTRICT's operational requirements and mandate to perform flood control and water conservation without regard to this Agreement and subject to the DISTRICT's determination of the need for priority to perform Storm-flow Spreading prior to any spreading or acceptance of Agency Treated Water into the Zone 1 Ditch.
3. **Records of Spreading of Agency Treated Water.** Following a reasonable period after receipt of any written request from the AGENCY, the DISTRICT shall make available to the AGENCY and WRD the DISTRICT's existing records of the quantities of Agency Treated Water spread in the DISTRICT's facilities and of any estimate of the quantities of Agency Treated Water delivered to the DISTRICT but not spread into the DISTRICT's Spreading Grounds (i.e., that may have bypassed the DISTRICT's facilities or may have bypassed the Spreading Grounds, which may have been discharged via the flood control channels of the DISTRICT to the Pacific Ocean).

4. **No Obligation for DISTRICT to Add Facilities.** Nothing in this Agreement shall obligate the DISTRICT to build, acquire or in any manner operate any assets, channels, or facilities of any nature whatsoever that the DISTRICT not otherwise would own or operate without regard to this Agreement.
5. **No Obligation for DISTRICT to Incur Expenses.** Except for the notice and reporting obligations expressly stated herein, nothing in this Agreement shall obligate the DISTRICT to incur any expense, of any nature whatsoever, including, without limitation, capital expenditures or routine or nonroutine operation or maintenance expenses, that the DISTRICT not otherwise would incur without regard to this Agreement.
6. **No Implicit Grant of Rights by DISTRICT.** Nothing in this Agreement shall grant to the U.S., the AGENCY, the WRD or to any other party any rights or powers not expressly granted by this Agreement, including, without limitation, any rights to construct upon, occupy or use any of DISTRICT's rights of way or any other real or personal property or to transfer any Unused Capacity to any other party.
7. **Written Requests to DISTRICT.** As a precondition to spreading Agency Treated Water, the AGENCY must deliver to the DISTRICT and WRD a written request (the "Written Requests") to spread Agency Treated Water. Each Written Request must specify the desired flow rate and the total acrefeet of Agency Treated Water to be delivered to the DISTRICT and the time frame during which the AGENCY desires the Agency Treated Water be spread at the Spreading Grounds. The AGENCY must deliver each Written Request to the DISTRICT at minimum five (5) business days prior to the date of the desired discharge of Agency Treated Water into the Zone 1 Ditch. To be effective, the first Written Request must include written evidence, satisfactory to the District, that the AGENCY has received approval from the Main San Gabriel Basin Watermaster allowing the AGENCY to transfer Agency Treated Water from the Main San Gabriel Basin to the Central Groundwater Basin, specifically through spreading at the Spreading Grounds.
8. **Documenting Flow of Agency Treated Water.** The AGENCY shall record daily readings of the flow rate in cubic feet per second and the total acrefeet of any and all Agency Treated Water discharged from the AGENCY pipeline outlet into the Zone 1 Ditch. The AGENCY shall deliver to the DISTRICT and WRD on a weekly basis, at the AGENCY's sole cost and expense, copies of those records within seven (7) calendar days of the end of any given week.
9. **Insurance.** The AGENCY shall ensure that any and all of the AGENCY's agents or contractors that may be retained to operate and/or maintain the Agency Treatment Facility or to treat, manage, or discharge Agency Treated Water that may be discharged into the Zone 1 Ditch, and their subcontractors:

- a) Provide evidence of the following insurance coverage and limits:
1. Commercial General Liability, \$1,000,000 per occurrence and in the aggregate;
 2. Commercial Automobile Liability, \$1,000,000 per claim and in the aggregate; and
 3. Name the DISTRICT, the County of Los Angeles and WRD as additional insured on such contractors' and subcontractors' insurance policies referenced above relating to their activities at the Agency Treatment Facility.
- b) The AGENCY shall also require its contractors and subcontractors to cause, their insurance agents to provide directly to the DISTRICT and WRD evidence of the insurance coverage described above.
10. **Standard Quality of Agency Treated Water.** The Treated Water discharged into the Zone 1 Ditch shall meet all Federal and State maximum contaminant levels (MCLs) and the State action levels for 1,4-dioxane, perchlorate, and N-nitrosodimethylamine (NDMA).
11. **Testing and Monitoring of Agency Treated Water.** Prior to the first discharge under this Agreement, the AGENCY shall test the Agency Treated Water and the AGENCY shall provide the results of the Agency Water testing to WRD. Thereafter, the Agency shall test the Agency Treated Water on a monthly basis and the AGENCY shall provide the results of the Agency Water testing to WRD. Testing shall be performed at a laboratory duly certified to perform the required testing by the United States Environmental Protection Agency.

The AGENCY shall deliver to WRD the results of the Agency Water Testing within five (5) calendar days of having received the results of the Agency Water Testing. In turn, WRD shall immediately notify the DISTRICT, in writing, if the Agency Water Testing in any way shows that the Agency Treated Water subject of said testing fails to meet the requirements of Section 10 of this Agreement.

Notwithstanding the foregoing, the AGENCY shall be responsible, and hereby relieves the DISTRICT and WRD of any obligation or liability relating thereto, for any and all permits or permission, in any manner whatsoever, that may be required from any and all governmental authorities or third parties to accomplish the delivery of the Agency Treated Water into the Zone 1 Ditch.

WRD shall indemnify, defend, protect, and hold harmless the DISTRICT and the County of Los Angeles and their successors and assigns from and against all claims or damages, or expenses (including reasonable attorneys' fees pursuant to 42 U.S.C. Section 9607(e), Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, and under California Health and Safety Code §§ 25,000 et. seq.) incurred in connection with the flow of Agency Treated Water into the Zone 1 Ditch, the Spreading Grounds, or any of the DISTRICT'S facilities.

12. **Term.** This Agreement shall become effective only upon its approval and execution as authorized by the AGENCY, WRD and the Los Angeles County Board of Supervisors ("Board"). Once so approved, it shall continue in effect for a period of twelve (12) months from the date of its approval by the Board.

Notwithstanding the foregoing, this Agreement may be terminated upon a material breach of this Agreement by any party providing prior thirty (30) calendar days' notice to all other parties. This remedy shall be in addition to and not in place of any other remedy available to the parties in this Agreement, in law, and/or in equity. Notwithstanding the foregoing, any provisions in this Agreement regarding indemnity or holding a party harmless, including this Section 12, shall survive termination of this Agreement.

13. **Notices.** Unless otherwise provided in this Agreement, any Written Request, notice, demand, or other document from one party to the other under this Agreement shall be delivered in writing via First Class U.S. mail or overnight courier (U.S. Mail Express Mail overnight delivery, Federal Express, or an equivalent overnight delivery service), or via telefacsimile (with written confirmation as proof of delivery), or delivered in person as follows:

If to DISTRICT:

County of Los Angeles Department of Public Works
Water Resources Division
Attention Engineer in Charge of Spreading Operations
900 South Fremont Avenue
Alhambra, CA 91803
Telephone: (626) 458-6307
Fax: (626) 979-5309

If to U.S. or AGENCY:

U.S. Environmental Protection Agency
Attention Patricia Bowlin
75 Hawthorne Street (SFD-7-3)
San Francisco, CA 94105
Telephone: (415) 972-3177
Fax: (415) 947-3526

If to WRD:

Water Replenishment District of Southern California
Attention Bruce Mowry, General Manager
12621 East 166th Street
Cerritos, CA 90203

Any notice, demand or document so given, delivered or made shall be deemed to have been given or delivered or made on the day on which the same is deposited in the U.S. mail, or, as the case may be, delivered to the overnight courier, addressed as stated above, with postage thereon fully prepaid. Any party may change the above delivery address or numbers upon written notice to the other party delivered in writing in the manner set forth above.

14. **Governing Law.** This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.
15. **Amendment.** No variation, modification, change or amendment of this Agreement shall be binding upon any party unless such variation, modification, change or amendment is in writing and duly authorized and executed by the Los Angeles County Board of Supervisors, WRD, and the AGENCY. This Agreement shall not be amended or modified by oral agreements or understandings among the parties or by any acts or conduct of the parties.
16. **Entire Agreement.** This Agreement constitutes the entire agreement among the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements and understandings.
17. **No Third-Party Beneficiary/ Successors and Assigns.** This Agreement is made and entered into for the sole protection and benefit of the parties named in this Agreement and their permitted successors and assigns. No third party shall have any right of action based upon any provisions of this Agreement.

18. **Waiver.** No waiver of any breach or default by either party shall constitute a waiver of any other breach or default, nor shall any such waiver constitute a continuing waiver.
19. **Severability.** If any provision of this Agreement shall be determined by any court to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement shall not be affected, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this Agreement.
20. **Counterparts.** This Agreement may be executed simultaneously or in any number of counterparts, each of which together shall constitute one and the same instrument.
21. **Interpretation.** All parties have been represented by counsel in the preparation and negotiation of this Agreement. Accordingly, this Agreement shall be construed according to its fair language and any ambiguities shall not be resolved against or in favor of any party.
22. **Assignment.** Neither party shall assign this Agreement or any of such party's interest, rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld except that either party may assign the Agreement, or any part thereof, to any successor governmental agency performing the functions of the assigning party as its successor.
23. **Waiver of Certain Rights.** AGENCY and the U.S. waive their enforcement authority under CERCLA and all other relevant statutes and agrees not to take any action, including, without limitation, issuing any mandates; orders or initiating any litigation against the DISTRICT; the County of Los Angeles; WRD or any of their respective special districts, supervisors, officers, agents, directors or their successors and/or assigns, for any cleanup, remediation, abatement, reimbursement, compensation or treatment, or recovery of the payment of any resulting or related costs and/or expenses, to the extent these result from the discharge and delivery of Agency Treated Water to the DISTRICT by the AGENCY. Notwithstanding the foregoing, the AGENCY does not waive enforcement authority that it holds independently from this Agreement against the DISTRICT under CERCLA or any other relevant statute for acts committed solely by the DISTRICT that do not relate to the delivery or discharge of Agency Treated Water. This Section is not intended to limit the rights or obligations of the parties set forth elsewhere in this Agreement or under the law or in equity.
24. **No Waiver of Other Rights.** Nothing in this Agreement is intended to waive any of the DISTRICT's or WRD's respective rights to proceed against any party for breach of this Agreement or for indemnity and/or contribution as otherwise available under the law or in equity.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective and duly authorized officers on the day and year above first written.

COUNTY OF LOS ANGELES

ATTEST:

By _____
Chairman, Board of Supervisors

VIOLET VARONA-LUKENS
Executive Officer of the
Board of Supervisors of
the County of Los Angeles

By _____
Deputy

APPROVED AS TO FORM:

LLOYD W. PELLMAN
County Counsel

By _____
Deputy

UNITED STATES OF AMERICA

By Its AGENCY

By _____

Its _____

APPROVED AS TO FORM:

By _____
Counsel for AGENCY

WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA

By _____
President, Board of Directors

By _____
Secretary, Board of Directors

APPROVED AS TO FORM:

By _____
Counsel for WRD

GH:jac
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